

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5416 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI GAJABHAI NAYAK

Versus

DISTRICT MAGISTRATE PANCHMAHAL

Appearance:

MR SATISH R PATEL for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

ORAL JUDGEMENT

1. The petitioner was detained under PASA by virtue of an order passed by the District Magistrate, Panchmahals, at Godhra on 10th March 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act']. The grounds of detention indicates that the detaining authority took into consideration two registered offences against the petitioner. The authority also considered the statements

of five anonymous witnesses and arrived at a subjective satisfaction that the petitioner is involved in illegal and anti social activities which are detrimental to public order. The authority also recorded a satisfaction for the need to exercise powers u/s 9[2] of the PASA Act arrived at a conclusion that to immediately prevent the petitioner from pursuing his illegal and anti social activities, he is required to be detained under the PASA Act and that no other less drastic remedy is possible to be resorted to.

2. The petitioner challenges the order of detention by this petition under Article 226 of the Constitution of India mainly on the ground that the documents supplied to the petitioner by the detaining authority are not legible, particularly, pages No. 19, 20, 24, 37, 42, 46 and 49.

3. None of the respondents have filed any affidavit in reply.

4. Mr.S.R.Patel, learned advocate appearing for the petitioner has relied on the above contention alone.

4. Mr.D.P.Joshi, learned AGP has opposed this petition.

5. Mr.Patel has placed on record of this Court the copies supplied to the petitioner. They have been perused by this Court as well as Mr.Joshi, learned AGP. Mr.. Joshi in all fairness has conceded to the fact that the copies supplied to the detainee are not legible. This court also concurs with his view.

6. Since the copies which are supplied to the petitioner / detainee are not legible, it has deprived the petitioner of making an effective representation which is a constitutional right. The continued detention therefore stands vitiated.

7. In view of above discussion, the petition deserves to be allowed and the same is therefore allowed. The impugned order of detention passed by the District Magistrate, Panchmahals, at Godhra, on 10th of March 1999 in respect of the petitioner Chandubhai Gajabhai Nayak, is hereby set aside. The petitioner be set at liberty forthwith, if not required, in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

parmar*

